



ABATEMENT APPEALS BOARD
Wednesday, November 17, 2010 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED January 18, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for November 17, 2010 was called to order at 9:11 a.m. by President Lee. Roll call was taken by Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner

Ann Aherne, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
Steven Panelli, Chief Plumbing Inspector
Rosemary Bosque, Chief Housing Inspector
Andrew Karcs, Senior Housing Inspector
Patrick O'Riordan, Senior Building Inspector
Donald Duffy, Senior Building Inspector

Francesca Gessner, Deputy City Attorney

B. OATH: Secretary Aherne administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Meetings held on January 20, 2010 and March 17, 2010.

Commissioner Murphy made a motion, seconded by Commissioner Mar that the January 20, 2010 minutes be approved. There was no public comment. The motion carried unanimously.

Commissioner Clinch made a motion, seconded by Commissioner Romero that the March 17, 2010 minutes be approved. There was no public comment. The motion carried unanimously.

Secretary Aherne called for public comment. There was no public comment.

D. NEW APPEAL: Order of Abatement.

1. CASE NO. 6740: 32 Peralta Avenue

Owner of Record and Appellant: Seth Jacobson, 401 Roland Way, #220,
Oakland, CA 94621

Agent for the Appellant: William A. Wasko, One Kaiser Plaza, Suite #750,
Oakland, CA 94612

ACTION REQUESTED BY APPELLANT: Appeal of the Order of Abatement
issued September 10, 2010 and assessment of costs be waived.

Secretary Aherne stated we will first hear from the Department.

President Lee said the procedure is we will hear from the Department first, and then the Appellant and then we take questions, comments, and rebuttal from the Department and then rebuttal from the Appellant.

Secretary Aherne said the Department has seven minutes.

Steven Panelli, Chief Plumbing Inspector, stated the case of 32 Peralta. We have fees of \$2,018 for the complaint due to the fact of man-hours, staff hours, hearings and the fees that are assessed for that investigation of the complaint. The complaint was about a broken sewer.

My inspector went out and posted to the building on July 13, 2007 to abate this complaint. They went all the way until recently of September 22, 2010 when it was finally completed and the corrections were made. The permit was obtained in August, 2010 to make the corrections.

We have a hearing officer, Chief Building Inspector, Neil Friedman, at the time and his abatement recommendations were that they were to have 10 days to apply for a plumbing permit and 30 days to complete all work that was back in April 29, 2010. Again, all this work did not commence until September just recently.

During that time, not only were my man hours used up in investigating all this and clerical support staff but also the Department of Public Works. The Sewer Operations also went out there to clear the stoppages, ran cameras to check to see what the stoppages were and to find out what was going on and who is responsible for this.

We actually got the call in from Sewer Operations telling us that there was a break at an intrusion from a private tree that was actually causing the problem and asked us to help them notify the owner of this problem and requesting them to make the corrections.

Again, we went through all the paperwork of sending every letter certified that we have here, everything that we went through to get it completed because of the contents that was coming out of the sewer onto the sidewalk and into the neighbor's property, that was the main problem, the sewage that was actually coming up and out that is where we get the complaint from and I am asking that it be upheld and fees that have been required by the staff.

Commissioner Murphy asked has it been repaired? Inspector Panelli stated yes, it is finally repaired. According to the permit, it was finally repaired on September 22, 2010.

Commissioner Murphy asked if they obtained the permit to do it? Inspector Panelli stated yes, they did.

President Lee asked has everything been done to your satisfaction? Inspector Panelli stated according to my inspector that was out there, everything was corrected as far as he knows it is running again.

Vice President Walker asked what was the delay in getting any action between 2007 and 2010. The Appellant stated that it was the responsibility of the City to do camera work in the sewer and they were waiting for them. What is our process in that case? If you could explain this. What is the responsibility for identifying the problem?

Inspector Panelli stated what happens with the location of the house trap if it passes the curb into the City sidewalk into the City sidewalk of the street, the City will go up there to make sure that there are no breaks and nothing happened. From what I obtained from Sewer Operations, they went out and they checked that there were no breaks and nothing happened. They informed us there was a stoppage, and that it was the responsibility of the homeowner to repair it. That is when we went out there and posted the building for unsanitary conditions and asked them to repair it to clear the stoppage but it continuously kept happening, and that is when we knew we had a break.

Vice President Walker asked when did the City come back to that determination about our lines?

Inspector Panelli stated bear with me. I just got this today. Ray Matias with the PUC actually was the complainant and that was on July 12, 2007 so they already went out there and checked to make sure that it was not theirs. The actual description was the house trap was broken because the private tree which was causing sewage to seep into the neighbor's property at 34-38 Peralta Avenue. Sewer operation has cleared it but the problem still is still reoccurring since 2005 so that is when we got involved.

Commissioner Hechanova asked were there any other reports that resulted after the last inspection or some last report in 2007 because that is almost close to three years?

Inspector Panelli stated 2007 until now, we are actually going back and forth since our notifications and everything. Once we get to a certain level we are not getting any response from the owner about taking care of the problem and that is why we take it to Code Enforcement and they take it from there that is when we have hearings. Hopefully, that problem gets resolved. Obviously it did not happen that way. It continuously went on and on and nothing is taken care of. It might have been cleared from time to time, but the problem persistently came back.

Commissioner Clinch asked where is the responsibility to homeowner and the City to take over and vice versa?

Inspector Panelli stated when the homeowner is responsible from their house all the way to the curb, and some people think it is just the house trap. But if the house trap is not at the curb, it is going to be the house trap extra 2-3-4 ft. whatever it takes to get to the curb and then about another 1 foot outside the curb because usually you are digging and making that connection.

The City will bring in the main lateral and they will come off that lateral and bring that piping to your location, and as a courtesy they will leave it to that curb location. If they wanted, they can request that your line actually be from the house trap all the way into the street and all the way to the main lateral, but the City generally takes care of that line from that main sewer to the curb.

Commissioner Clinch asked if the tree that they are describing could have been a tree in the sidewalk?

Inspector Panelli stated they are saying it is a private tree and sidewalk or on the ground that is causing the problem. I had not seen it and do not know for sure but that is exactly what it is and I am taking from them and they are pretty good about this.

Commissioner Murphy stated it is pretty common in San Francisco sidewalk trees growing into the sewer plus roots and all that.

Inspector Panelli stated correct. If you have crack separations, a little bit of earthquake, since we are in earthquake country, a little separation that might happen if you have a clay pipe or cast iron vent gets jolted and once water gets to the ground, the roots find that water, it goes to that water source and then it fills inside that pipe and it is very common.

President Lee stated if there are no more questions. The Appellant, please.

Bill Wasko stated Mr. Jacobson has been in town until this last weekend and we were hoping that he was going to be at the hearing but he is not. I am going to address a couple of issues that were brought up.

The problem with this property has been ongoing since 2001 and the issue from the time that City gave Mr. Jacobson notice was whether or not the problem was on the City side or on the property owner's side and I think that is fairly clear. We clearly acknowledged that there was a problem there. You can see the sewage was coming out of the trap but the question was why it

was coming out of the trap? Was it coming out of the trap because it was coming out of Jacobson's property or the City property?

When Jacobson was notified about the problem in the sewer, he had a plumber come out, that plumber said the problem was out in the City line. There were discussion between Jacobson and the City about that. The City basically said we decided that it is on your property. There was a notice of violation that went out that said there was a problem with the house trap, but it did not specify what the problem with the house trap was. You have a defective house trap. Well, how was it defective? It is my understanding that Mr. Patino can explain to you that typically if there is a problem with the house trap, the sewage will back up into the house, as opposed to back up into the street.

That said, the bottom line here, after all of these years all of this time, the work has been completed, it has been finalized, it is code compliant and the problem persists because the problem is not with Mr. Jacobson's property, the problem is in the street. The City has come out regularly since 2001 to clean out the line in the street because that is where the problem was and Mr. Jacobson has no control over that line.

So after the \$2000 has been spent, the problem the property owner has is he going to be required to spend \$2,000 in liens, fines and work that is expended when he has no control over where the problem was and that is in the street.

Mr. Patino, who did the work, can explain to you what he saw when he went out there, he had the Sewer Department with him and can explain what they found. I think it will be a little bit clearer that this is not so obviously a problem with Mr. Jacobson's property. It is clearly much more a problem with the City's property. So with that I have a letter from Mr. Jacobson that he prepared before he left that can explain what's happened over the years since 2001 which I would like to submit to you.

At the back is a picture that was taken last week that shows the sewage coming out. This picture was taken last week and this was subsequent to the work being completed and finalized and you can see there is still a problem. Now I would like to have Mr. Patino come up to explain to the Commissioners exactly what he did out there.

Mr. Patino stated on August 18, 2010, I pulled the permit to do the work and I called for inspection and asked the inspector to give me a correction notice of what he wanted me to do specifically. At that time, I really did not know what they wanted me to do. So he wanted me to replace the existing two-way cleanout.

So then basically when I was speaking with him, I called for inspection and when I was out there, I knew that the line was stopped and I took my snake and tried to clear it up. The inspector pulls up at that time when I am pulling out the snake, it got stuck at 8 feet. So I guess he had some plumbing experience in the past and he said, is it possible it went back towards the house?

When I pulled out the snake, you could clearly see that there were some roots. So at 8 feet, basically that would have been going towards the house up the down spout if it had been at 8 feet going towards the house. So clearly, to pull out the roots, it was toward the street.

I asked him at that time if he could get the City out there to clear the line and so he got on the phone, got the City worker out there within a half hour. Basically, the City worker went out there and started clearing the line and had trouble clearing the line and he also mentioned that his snake got stuck at 7 feet. He mentioned 7 feet; mine line got stuck at 8 feet. There is no way of him measuring his line so he just went by calculations.

Basically, at that time he continued. After continuing making attempts of clearing the line, he finally got the line cleared and the water started to flow. So after he cleared it, he continued for about another 10-15 minutes to make sure that the line was cleared and the line got cleared. At that point, I asked him can we get a camera out there and he said he would make a report and try to get a camera out there within a week or so and he gave me the number of Ray Matias, the person in charge of this.

So I spoke with Mr. Matias and he said back in June, he tried to get a camera out there and was unable to get a camera inside the sewer line because of the stoppage. I told him that the line was already clear and if it was possible for him to get a camera in there again. He told me to call him within a week.

Prior to me getting a hold of him, I was unable to get a hold of him and I left him several messages and he never returned any phone calls. Then after I spoke with him on September 7th that was the last time I was able to get a hold of him. He never returned any phone calls after that.

Basically, from that point on, I was waiting for them to get the camera in there before I could replace the two-way cleanout because of the house trap, with my experience it's very difficult to get a camera in the house trap. When I spoke with Bill, he said go ahead and just finish the work and gets it inspected, then worry about the camera later. That is when I scheduled for the final inspection on the 22nd and got it all signed off.

Commissioner Murphy stated I have a question for Bill. I heard the word camera there quite a few times. Was the camera ever used any time between 1971 and the time we opened up the street to do this repair? Was the street ever opened up any time previous to check out and see?

Mr. Wasko stated 2001 until now, we are not aware the street was opened up. Well, we believe that a camera was used. Mr. Jacobson did not have a camera at the time, I do not believe, although he does address that in his letter and that would be more authentic and accurate.

I know for sure the street was not opened up. Right now, there is a mark on the street that was put on the street on the same day that the project was finalized and that was put out by the City so that locates, I presumed, as a sanitary source and that was located by the City.

Commissioner Hechanova asked what seems to be a basic question here is that if there is the problem with the roots it is because of the tree, where is the tree located? The Appellant stated I do not know if the tree is located on Jacobson's property or the neighbor's property.

Commissioner Hechanova asked is there a picture of the sidewalk or a diagram?

Mr. Wasko stated here is the lower neighbor where the sewage goes and you could see here is the edge of Jacobson's property. So if the problem is here, it looks like the tree is in the next door neighbor's property because it would have to be downhill and this is a hill and this blockage has to be downhill in order for it to be causing a problem to Jacobson's property.

Vice President Walker asked so one of the questions I have is what took so long between 2007 and 2010 to get any action on this? When you get a violation notice, the property owner is responsible for proposing what the fix is. Clearly, there was a problem and I think at this point we are being asked to just uphold the issue that you fix it and there is assessment and there are penalties and fees attached because of the violation in the beginning. Your claim, at this point, is that the problem is not fixed?

Mr. Wasko stated our claim is that we were required to do work that was not necessary because the problem persists. The whole point of the process here has been to correct the sewer problem that would solve the nuisance problem and my point is that we spent a lot of time, and apparently the City spent a lot of money, working on something that was not going to fix the problem because the problem was not on Jacobson's property.

If it was a private tree, it had to be the next door neighbor's tree that was growing into the street. Private citizens are certainly not going to be able to tear up the street but if this was ignored, I had an exchange of letters with Ken Young in August of 2007. I also sent him a letter on July 24th. He left me a voicemail and I sent him a follow-up letter of August 2nd of 2007 then we never heard anything from the City. We presumed there was an effort to be made about the determination of what was happening.

Mr. Jacobson does not spend a lot of time at this property as he indicated in this letter. He spends a great deal of time in Southeast Asia. I am going to guess that that was part of the reason. I do not believe there were any additional complaints from the neighbors during that time; I am not aware of it.

President Lee asked if you allude to the fact that the problem was not because of what the house had from the trap to the house, then why did the property owner replace it? Why did you go through the process of fixing it?

Mr. Wasko stated we did not think with the City we had a choice. There is a notice of violation, hearing of abatements, liens were being assessed and put in place and fees are being assessed. We felt the only option at this point was to get the work done that the City was requiring because there was no conversation about the work.

President Lee asked if that was the case, why did you not do it earlier on in 2007?

Mr. Wasko stated as you were aware, as you read the staff report, there was some work done, granted it was not permitted work that was done a while ago and it was apparently the wrong work. I was not involved in that and cannot speak to that but at the end of the day, whether it was done in 2007 or now, it still would not solve the problem.

Commissioner Murphy asked what exactly was done this time around? Did they replace a section of the pipe that was damaged or you found that there was no damage there when you finally dug it up and you are still saying that the problem is the street side of the trap, is that what I am hearing?

Mr. Patino stated basically, I replaced the two-way cleanout.

Commissioner Murphy asked did you replaced the trap?

Mr. Patino stated there was no house trap when I did the work so I installed the house trap. There is nothing defective when I did the work. I could not get the snake passed 8 feet, which is already in the street. The house trap is right at the curb. If you go in, it goes down about a foot and a half and then it goes toward the street.

Commissioner Murphy stated let me ask Inspector Panelli, is this a situation where you would possibly need a backflow valve up there, water coming back in?

Inspector Panelli stated to answer your question, the answer would be no. In regard to this situation, there was no house trap that was installed. That was one of the problems and that could have caused this issue. We have always taken the side of, yes there is a violation and yes, there is a problem. If you believe it is not on your property, no problem.

They had, I believe, ample time to have a contractor come in with a camera and run a camera from the property all the way through the trap and show us, hey look it is not ours. I'm not saying that is the cheapest way to go compared to ripping up the sidewalk and replacing it, but at this time when we find out there is no house trap, the house trap is required in San Francisco, we would have made that requirement anyway.

So providing us documentation that shows that there was no stoppage, no breach, no break on the piping that was kind of on them at this point because we are being told, hey look we already looked at it on the City side we do not see a problem we believe it is theirs. Show us that it is not a problem we will take away the complaint not an issue and then we would talk to the Sewer Operations and say, look they should provide us evidence that show they do not have a break or problem. It must be on the other side and something needs to be taken care of. Personally, I would talk to them and make sure that it gets taken care of, that did not happened.

Commissioner Murphy stated I am having a hard time believing that this repair took so long.

Commissioner Hechanova stated in the same category here, if it took this long, the roots in fact it was the problem originally, could have continued to grow to perpetuate if not create a bigger problem. Had it been addressed right off the bat?

Inspector Panelli stated the problem we have with roots is when roots enter into the piping they follow the water line. They go up and down wherever there is water. You run a cable through cutting blade will cut the pipes at those locations where it is broken. The problem is when it goes into the piping, it gets into a small hole they start to grow. When they grow, they start to make more cress, more intrusion areas. So that will cut the root and the dirt that is coming in, make it clear, but what happens is, you think it is ok then over time it starts to grow more roots again and then the problem reoccurs. If found at the time say 2007, I am not saying it would have fixed everything, but if you had an intrusion or break, wrong trap that you may have been able to stop the problem further down the line.

President Lee asked for public comment. There is none. President Lee called for the Department's rebuttal.

Inspector Panelli stated one thing I would like to explain and that is, from the Plumbing Department, we did not put any fines on this property. When we first sent out the notice of violation, sent the letters, there were no fines that we assessed to this property. We just want it to be completed. The fees that had been associated, not fines, the fees are all investigation fees that had been assessed to Code Enforcement and our Department. That is all we are trying to recuperate.

Mr. Wasko stated the only comment I would like to make is that when those notices of violations were first posted, Mr. Jacobson tried to solve the problem because he believed, based on his historical problem with the property, that was not the problem for the back-up and it was not until this year that the hearing happened. It just seems to me, at the end of the day, the goal was to solve a problem.

By the way, I just want to point out, the statement made earlier that there was no house trap. The notice of violation said that there was a defective house trap. There was a house trap and it was replaced without a permit with a two-way cleanout, which is not appropriate so that had to be replaced but at the time the notice of violation was put out, there was whatever house trap had been in there because Mr. Jacobson had not done any work on the property. I just want to make that clear so that there is not a misconception.

Commissioner Murphy made a motion, seconded by Vice President Walker to take the staff's recommendation to uphold the order of abatement and the assessment of the cost.

Vice President Walker stated I think that, in looking at this especially the age of the issue, there was a problem in the beginning because of inappropriate plumbing and you know I do not know a lot about trees, roots and plumbing, except that the roots go where there's water. If there is a problem in the beginning it attracts roots in my experience with plants.

I would suggest that the issue here is one of the initial problems with the plumbing as stated here that there was a defective house trap in this case, there was no house trap initially and then there was an unpermitted fix to that so I think that our Department acted appropriately in issuing the violation and that we should be compensated for the cost of our staff time and addressing this issue in coming to resolution.

President Lee stated I feel that if there is a sewage backup problem, it is incumbent for both the private party and the public sector to investigate what the problem is. Clearly, we did find that there was a problem with the house trap, so that not having a house trap or illegal house trap and that could contribute to the problem so we want that fixed so I can see the Department wants that fixed but even if after fixing it, and there is still a problem, I would ask you to contact the Public Utilities Commission (PUC) and ask them to investigate further but the first order of business is to get that illegal house trap fixed. Once we discovered it, I think we took the appropriate action so I would uphold the motion as well.

President Lee asked if there was no other discussion and a call for a vote.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion carried unanimously.

2. CASE NO. 6741: 585 Ellsworth Street

Owner of Record and Appellant: Henry Lucero, c/o Elba, Henry & Mary Elba,
21 Lakewood Circle, San Mateo, CA 94402

ACTION REQUESTED BY APPELLANT: The owner needs more time to gain access to the property to make repairs.

Rosemary Bosque, Chief Housing Inspector, stated I do have some photographs here that I would like to put up on the screen. This is a single-family dwelling that is occupied in which a complaint was received by an occupant in early May of this year.

As you can see, this is, as I show you some more photographs, a severely blighted building that has not been properly maintained, both in the exterior and interior of the building. This is what the building looked like at the time of the initial notice of violation that was issued earlier in May of this year.

Now the only two items on the extensive notice of violations that had about 16 action items on it. One was a repair of a gate and the only other item that has been done, as you can see here, is the vegetation has been removed but there are (let me just further go through some of these things) as you can see, dilapidation and lack of care that has gone on in this building for quite some time.

The notice of violation gave the property owner 30 days to repair, they did not do so. They went to a Director's Hearing in August of this year and the Director's representative, at that particular point in time, gave the property owner an additional 28 days to comply. It was an advisement. The property owner did not do so.

There was a building permit that was required to do some of the exterior work that I just showed you and some of the interior work and that permit has not been applied for except it was just applied for last Friday so we are not getting any timeliness in this case.

As you can see, people are living in a building that has not been properly maintained and also has harbored rats and other types of things. All these photographs are in the staff report that you have and are available for the public.

Because of the extent of the work and the fact the property owner has now had six months to make these repairs and only two other notice of violations have been addressed, there are 15 other violations that have not been addressed that pertains to the exterior and interior of this occupied single-family dwelling that, by the way, is at the corner of Ellsworth and Ogden.

Obviously since the City is going in a completely different direction with the dilapidation of blight ordinance or vacant building ordinance, this is not how we want property owners to maintain their property. Therefore, the basis on the way this item is described in the agenda, we would ask you to affirm the notice of violation.

We feel that every item on there was incredibly valid for what they saw of the photographs which you see in the facts of the case and we ask that the Department's representative be upheld, that the order of abatement be issued on this, and that should then encourage the property homeowner to go forward with the items that they need under the permit and everything else and call for a final inspection so that these items get cleared and the individuals that are in this property are no longer impacted.

President Lee asked are there any questions? Commissioner Murphy stated the owner is saying he did not have access to the property.

Inspector Bosque stated that is something he has been indicating to us for the last six months but obviously, it was just recently that some of the items in the exterior of the building had been addressed, only a few, and he had access to that. With respect to the interior of the property, six months is sufficient time to be able to do the proper notification to get in and make these repairs. At least that is staff feeling.

Commissioner Murphy stated before he can get into the building, it is difficult to do repairs. We would like to hear from the Appellant. Inspector Bosque said absolutely, he could give you that information.

President Lee asked the Appellant to present his case.

Mr. Henry Lucero, owner of the property, stated first thing I have to say is I have no problem with what the inspection was and I think it is pretty accurate. My problem is with the tenant situation going on there. They have done nothing but prevented me or my contractors from going in there and try to deal with this. This has been going on for a very long time, as you can tell by the condition of the property.

There is currently a lawsuit pending, so I really do not feel comfortable in dealing with the specifics of what went on there. They have left the property after I acquired an attorney to help me. Basically, I have gotten my permits, got two contracts, I brought them with me and the work is now under way. I did as much as I could without incurring the wrath of the tenants there being bitten by their pit bull so it is basically what the situation is. Hopefully it is done very soon and I am sure that I will prevail in the lawsuit that will take place in front of the jury and the judge, that is basically my position.

Commissioner Murphy asked is the building currently vacant now and how long will it take to complete the repairs?

The Appellant stated yes, it is. Well, the building is vacant and there will be two stages to complete the repairs. The contractor is dealing with the inside and he said it is a very simple job and mainly maintenance issues and should not take too long. My best estimate would be a month or maybe even less.

President Lee asked any questions from the Commissioners

President Lee stated I have one question. You alluded to the fact you could not get access to the property but the property is a corner lot, could you not have started on the outside?

The Appellant stated well, the thing is that they have to get into the property to do most of the work. What we did was moved the vines and we worked on the front of the building. It cannot be painted unless you get inside because there is a lead issue. My painter says he needs to get inside in order to do the work properly.

President Lee asked for public comment. There was none. President Lee called for the Department's rebuttal

Inspector Bosque stated if the property owner indicates that they could get all this work done within 30 days and then call for re-inspection then staff does not have an issue with that, if we can finally get closure and get some movement on this because obviously, up to this point in time, we have not gotten the appropriate movement. I do not know when any of the litigation ever started, but they have had plenty of notice.

The Appellant went to a Director's Hearing back in August, and the hearing officer gave them an additional 28 days at that time. From that standpoint, if the Board wants to give them 30 more days, our concern would be that, in doing so, that it is clear to the property owner that they will be billed to have the Department reimbursed for the time it has taken to get compliance since it has extended so far beyond the original 30 days of the notice of violation.

If the Board wishes to do that, we do not have a concern with that, if the building is in fact vacant. However, they do need to get in and make those repairs because not only does it impact its occupants but the neighborhood as well, as you can see, it has been going on for quite some time.

Vice President Walker stated the property owner indicated that he was getting some resistance from the tenants. Have you been dealing with the tenants to get in to do the inspection?

Inspector Bosque stated yes, they have let us in and that is not something we can comment on because it is not information known to us. They were cooperative to us and we were able to enter the site and take pictures to see the exterior of the building as well.

Vice President Walker stated so I would suggest the condition of this warrants violation and would suggest to uphold the recommendations.

President Lee called for the Appellant's rebuttal

The Appellant stated basically, the situation here is that they are going to let the inspector in to document the violations and they are not going to let me in to repair them and that is basically what happened. I do not want to talk too much in particular about the case and anything I say here could be looked at by their attorney so I cannot say all that much. Basically, I will prevail in this situation. The fact that it is in such bad condition really shows that there is some intent by somebody to create that situation.

Commissioner Murphy stated you mentioned that they had a pit bull on the property. The Appellant stated yes, I had to find someone to do the work who is willing to do the work by battery power and yet they are still in the building laughing at us.

President Lee called for any questions or discussions.

Commissioner Hechanova stated I fail to understand why even just simple exterior maintenance would be a challenge, other than neglect. The other component is for somebody to continue to let something deteriorate that affects their health within the building is something that might be their choice, but the category of having to fix something outside that is needed to be, as your painter said they need to get inside, is something that is contradictory between what is to be done outside is needed to get inside?

The Appellant stated well, what he told me is that in order to do the work properly he needs to get in and do plastic work on the windows inside, so that when he does the work there is no

effect to the inside and that was the impression I got. So he is unable to do the work until he has access inside.

The deal with the tenants, without saying too much, there is a number of factions involved here and it is not a very clear case and it will go on for awhile. There are a number of people and number of interests involved and it is going to be a big mess in there. I do not feel very comfortable talking about the particulars of the case.

Commissioner Murphy stated those are civil issues that we do not have jurisdiction on, but the life safety and welfare of the public is something that we really adhere to.

The Appellant stated all I have to say is that I am not sure if it will make you feel better about it, but as soon as they got access, they started work on it and they are working there right now.

President Lee asked what are the terms of the abatement? Is there penalty and fines? Vice

President Walker asked what were the terms specifically laid out?

Inspector Bosque stated that pursuant to Chapter 1 of the San Francisco Building Code, they will be assessed for all the staff time going back from the beginning since they moved beyond the Director's Hearing.

Since this notice of violation was issued in May of this year and not subsequent to that, but we can apply those reimbursements directly after for failing to comply with the notice of violation. Before that they will have the \$170 per hour for the inspector's time and \$140 per hour for the administrative time. Right now we probably have five or so more hours in the inspector's time and a little less for administrative.

After this particular proceeding, we will be calculating that all up and presenting that to the property owner. We want it to be clear that he understands that reimbursement to the Department for the time it has taken to send him through this process, we would like to be reimbursed for that and we want support on that.

Commissioner Murphy stated when you have a tenant/owner situation, it is obvious they had ongoing, five months is really not a long time. You said May, right?

Inspector Bosque stated the notice of violation was issued in mid-May of this year and that frequently comes up as an allegation on the part of a property owner while we understand that. We are not triers of fact to be able to determine when the appropriate time should have been to go ahead and notice the tenants or what their long-term relationship was before this was brought to our attention. But obviously, as you can see in the photographs, this is a building that had a lack of care for quite awhile.

Quite frankly, in the 20 some odd years that I have been doing this, I find it hard to believe that if the property owner did not have access, they should have attempted to do something before the

building ended up looking as it is currently. So from that standpoint, it is of a concern, also not only to anybody that resides in that building but anybody that has to live next to it.

As you can see, those weeds were not chopped back until we wrote a notice of violation and that definitely has an effect on adjacent property owners. The photos that you have in your staff report (the pictures) showed rodent droppings and things like that; so in any case, that is a concern that we have. If you want to extend the time frame, we would just like to see some finite closure because this has now been going on for a period of time.

President Lee called to make a motion.

Vice President Walker stated I actually would like to uphold staff recommendation and make a motion to give the property owner maybe an appropriate amount of time to do the work, 30 or 60 days before it going into effect.

Commissioner Hechanova asked at what additional cost because of the Department's time?

Vice President Walker stated I believe that we have the right to recover costs that are related to the violation which is that the place is kind of dilapidated so we have the right to carry the costs on that. It is not about any other civil issue that may be between the owner and the tenant at this point.

President Lee asked do we have a figure on the cost?

Inspector Bosque stated not at this time I cannot give you the exact number. We probably have at least five hours of inspector's time and a little less of administrative cost and those hourly rates are \$170 for the inspector and \$140 for administrative and that is going through the hearing process and the amount of re-inspection staff reports.

President Lee asked can we do this? We make a motion to uphold the abatement order. If in 30 days if the notice of violation repairs are not completed and if the property owner does not pay the Department for reimbursement costs of the inspection fees, can we do that?

Vice President Walker stated that is just what I made. I uphold it and delay the issuance for 30 days pending the solution.

Inspector Bosque stated I believe that the language that the City Attorney has indicated before is that you would be upholding the hearing officer but staying the enforcement of the order for 30 days, that is the language.

Vice President Walker stated and providing that we propose inspection cost, right? That is right and that is assuming that the work will be done and the fees will be paid and we will cover our costs.

Commissioner Hechanova seconded.

Vice President Walker stated hold on, I want to clarify the motion.

Attorney Gessner stated would that be 30 days from today's date? If all work is completed within the 30 days, the Order of Abatement will not be recorded against the property?

Vice President Walker stated yes, 30 days.

Inspector Bosque asked for a point of clarification and that is all work to be done is being verified by site inspection and the finalization of the building permit?

Vice President Walker stated precisely.

Commissioner Murphy asked has the owner obtained all the necessary permits? OK

Vice President Walker made the motion, seconded by Commissioner Hechanova.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion carried unanimously.

3. CASE NO. 6742: 127 Scott Street

Owner of Record and Appellant: Evelyn M. Wyatt, 127 Scott Street, San Francisco, CA 94117-3222

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the metal gate at the exterior rear stairs remain on a temporary basis.

Andrew Karcs, Senior Inspector of Housing Department, stated this is the case of 129 Scott Street. A three-story fully occupied 2-unit building, zoning R3.

The Department responded to a complaint that was received on the 18th of September from the complainant. The district inspector went out there and on the 21st of September issued a notice of violation on 29th of September. Basically there were seven items that were listed in the notice of violations and most were completed with the exception of two.

The case was referred to Roger Skelling back on the 7th of May of this year and there was a Director's Hearing that was held on the 20th of May. At that time the representative issued a 30-

day continuance, giving the property owner additional time to comply with two items (Item #2 and Item #7) notice of violations.

Item #7 was verified to be completed on the 17th of June but not Item #2 which deals with the metal gate on the rear stairways that creates neighbor obstruction. The case was again referred to a Director's Hearing and it was held on the 1st of July. At that point the representative, the Director, issued a 28th day advisement along with the 14-day Order of Abatement. At the end of 28 days, the Item #7 had not been cleared and an Order of Abatement was issued.

I like to point out the picture on that particular item. That is the metal gate at the rear of the stairway. The violation decided is Building Code 1008.1.5, which states that there has to be a landing on both sides of that metal gate.

At this time the Department would like to request that the hearing officer be affirmed and the owner to comply with the notice of violations, pull out proper permits and either remove the metal gate or provide the proper landing support on both sides of the metal gate. At this time, the property owner has stated that the gate was a temporary fix only and she intends to remove the gate but we have no idea what that means at this point.

President Lee asked could you let us know what is the number of the unit on the top floor, 127 or 129?

Inspector Karcs stated that would be 129.

President Lee asked are there are any other questions?

Commissioner Mar asked have all the other violations been taken care of except for the gate?

Inspector Karcs stated that is correct.

President Lee called to hear from the Appellant.

Evelyn Wyatt, owner, stated I am the owner and I have a tenant that is causing problems for me. I was always at work and I was always calling the Police because he would be very destructive. He lives downstairs and I live upstairs and I live alone and he would go upstairs. In fact, I had to install cameras because he was destroying my property.

In fact one time, Mr. Herring came out and I was working with the electrician and I left a ladder on the front on the landing so he could have access to the light fixture. When I got home, the ladder was not there so I asked Mr. Herring when he was there if he had seen the ladder and he said yes he did, the ladder disappeared so I do not know what happened to it and I had to buy another one.

The reason why I hired the International Gate Company to install the gate for me and I assumed that they would know what action had to be taken as far as permits. He installed the gate for me and the gate is now situated. I have a gate in the front also, that gate does not have a landing on

both sides. You have to walk up the steps and the gate opens onto a landing.

The gate in the back is situated the same way. I do not like having the gate there because to me it looks like a prison but I installed it there because I was advised by the Police to do that. They said that the way it was situated is that he felt like it was open and felt like he could walk in and that I do not have any kind of restriction there so the police are the ones that suggested I put the gates up because I did not know what to do at first.

I do have cameras there. He pulled down a tree that I had in front, a Japanese maple. I caught him on the camera but he was disguised. So I got a call the other day from the District Attorney's office and they felt like it probably would not prevail because he and this other guy that lives downstairs with him were in disguise but it was definitely them.

Again, this is only temporary until I can do something about the tenant. The complaints that he made that he initially did not have hot water was not true. He complained about the lights. He was taking the light bulbs out so I talked to this electrician and told him what the problem was and he suggested that I could put sensor lights out there which I did.

What he does now, he turns the bulbs so that when you walked by the lights they do not come on. He broke a light fixture, so I have to have that replaced so I am having lots of problems. Like I said I work and I am not around here much. When I come home I do not know what to expect. I am constantly calling the police but I do not have to call them as much now.

President Lee stated they will stick to the subject for a moment here. Could we talk about the stairs and the gate for the moment.

Vice President Walker asked who installed this gate? The Appellant stated the International Gate Company.

Vice President Walker asked are they licensed? The Appellant stated yes, they are licensed.

Vice President Walker stated that, if they are installing gates that are not up to code, you will probably have recourse with them but the police are not responsible for advising on building issues and this is one of those.

The Appellant stated they advised me what to do to keep the tenant from the area.

Vice President Walker stated that I understand that, but this issue that is under the jurisdiction of the Building and Housing Codes. I think that what we are asked to look at is this gate that actually present a health and safety issue according to our Building Codes about proper egress and proper gate placement. I am concerned that a gate company would be putting in a gate that is not up to permit so I have an issue with that and you may as well have issue with that. International Gate Company, is that the name of it?

The Appellant stated I did not realize that it was a problem until the inspector came up. It is situated the same way as my front door gate.

Commissioner Murphy stated I do not think the gate is the issue. The gate may be ok and up to code it is where it is installed. There is no landing in front. The Appellant stated then it is the same way as the front door.

Commissioner Murphy stated then it is in violation. Is there any way that this gate can be relocated? Put in the center? The Appellant stated that is what I will have to do.

Commissioner Murphy asked is there a way for this gate to be relocated to where there is a landing? The Appellant stated I could put it in the middle and have somebody come and cut it in to have landing in front and back.

Commissioner Murphy asked can we talk to the inspector about that?

President Lee stated the question is in your opinion, could a gate be installed legally at that location whether it is exactly in that location or somewhere on that stairwell?

Inspector Karcs stated I believe that it can. I will show you a picture. Again, I would not be the one to sign off on this, but I believe that it can be put right here in this area. She will have landing on both sides. Again, I am not the building inspector.

Commissioner Murphy stated that it is an easy solution.

Inspector Karcs stated again, staff has no problem having her put the metal gate here but just to comply with the codes that is basically it.

Commissioner Murphy stated had she taking care of all the other violations? Inspector Karcs stated that is correct.

President Lee stated they need to make sure that the gate swings out right? Inspector Karcs said we have been trying to work with the property owner and have given a continuance the first time and give them with an additional 28 days advisement. We are trying to work with the property owner.

Commissioner Murphy asked this is the property owner right here? Inspector Karcs stated correct.

President Lee asked for public comment. There was none. President Lee called for any more Department's rebuttal, any more inspectors, any final words?

Commissioner Murphy asked are you willing to relocate the gate? The Appellant stated to relocate the gate and put in the center, that is what I will have to do.

Vice President Walker said in that case I would move to uphold the staff recommendation and give 30 days to complete the work that is before her. If it is not, it has to be signed off and all the appropriate fees paid.

Inspector Bosque stated the difference between this particular case and the last is that she still does need to apply for the permit. The permit has not been issued to go ahead and move the gate and comply with the Building Code requirements, just so you are aware.

Vice President Walker asked so 30 days?

Inspector Bosque stated this went to a Director's Hearing twice and she was given 30 days continuance and more enough than time. It has been over a year and we have been dealing with this for 14 months.

Commissioner Murphy stated let's give her 60 days.

Commissioner Clinch stated let's make it 60 days. She has been showing plenty of activity trying to figure this out. She's not a licensed architect or contractor and needs a little help.

The Appellant stated I am off from work for next two weeks and that will give me time.

Vice President Walker stated I will amend it to 60 days.

Vice President Walker made a motion, seconded by Commissioner Murphy.

The Board voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>

The motion carried unanimously.

E. CONTINUED APPEAL: Order of Abatement.

1. CASE NO. 6733: 5 Seymour Street

Owners of Record: Margaret D. Nelson and Winston W. Montgomery, 5 Seymour Street, San Francisco, CA 94115

Owner of Record & Appellant: Winston W. Montgomery, 5 Seymour Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: Needs more time to finalize the permit.

At its June 16, 2010 hearing, the AAB heard this case and continued the matter for six months to the December, 2010 AAB meeting, or until the discretionary review process is complete, whichever occurs sooner. On September 30, 2010, Appellant Winston Montgomery informed the AAB by letter that the Planning Commission decided not to take Discretionary Review over the project at its September 16, 2010 meeting.

President Lee asked before we start, can I ask Attorney Francesca Gessner what should we do on a continued case? How is the procedure handled?

Attorney Gessner stated it is at your discretion how much time you want to give the parties to provide an update what has happened since the last time you heard the case. Traditionally, give each side three minutes and then public comment. You have not yet taken actions and today would be the time to take a vote on it.

President Lee stated we will have three minutes and we will hear from the Department.

Housing Inspector Donald Duffy with the Department of Building Inspection stated Appeal #6733. The nature of the violation is the dormer type roof constructed north elevation without a permit. The Order of Abatement issued on December 14, 2009. The building permit application #2008-0612-4326, to stop the legality of the existing dormer was filed in June, 2008 but is not issued to date.

President Lee asked if Commissioners have any questions.

Vice President Walker asked so what has happened between our first hearing and this one? Inspector Duffy stated the building permit application was at the Planning Department and that building permit application was approved on the 25th of October this year and it is now with the Department staff Plan Check Division.

President Lee asked are there no more questions?

Commissioner Murphy asked how long it will be in that Department? Inspector Duffy stated I cannot say it.

President Lee asked the Appellant to present his case.

Winston Montgomery stated as I said before, I think I have made reasonable attempts to get this permit finalized and to legalize the dormer. I already filed a permit before the Order of Abatement was issued. The requirements of the Order of Abatements are unrealistic and the slow-moving procedures to get a building permit.

I went through Planning and I went to recently a Director's request that I prevailed and now it is in the Building Department. I just signed a contract with a structural engineer which is part of

the requirements to issue or to apply for a building permit. So I am going at a reasonable speed and I do not think I should be fined or have an assessment of cost because the procedure itself is slow.

There is a policy statement at DBI at 1660 Mission Street, that says the processes should be fair and understandable and I think it is a matter of fairness that I have tried to legalize this property, the dormer which was constructed illegally but I had followed all the steps, that is all I have to say.

President Lee asked any questions?

Commissioner Hechanova asked did you start the work before the permit was executed? The Appellant stated yes, this is a long-standing issue and this was built over 25 years ago. As a result of a dispute with my neighbors, they turned me into the Building Department. So yes, this was a long standing and yes, it was built before. The permit I am applying for is to legalize the dormer.

Commissioner Murphy stated I made a motion that we extend this as such time.

President Lee called for public comment first? There was no public comment.

Commissioner Murphy stated I make a motion that we extend this until you obtain your permit.

Vice President Walker stated so you are talking about upholding it and extending like giving 90 days to stay and then come back if there is an issue?

President Lee stated I think we should continue. Do you want that? You want to give 90 days?

Commissioner Murphy stated I want to give 90 days.

The Appellant stated I believe we can have a permit in 90 days.

Commissioner Murphy made a motion, seconded by Vice President Walker upholding the staff and staying the action for 90 days, pending the permit and the work to be done.

Attorney Gessner stated there are two different options but what I think you are saying is take a final action today where you are suspending enforcement for 90 days and if all work is completed and obtain the permit for 90 days, an Order of Abatement would not issue. The alternative would be to do a continuance for 90 days and have them come back and report what is happening, so I just want to clarify.

Commissioner Murphy stated 90 days until the permit is issued, whichever comes first.

Vice President Walker stated let's clarify because I want to second this. We're upholding the staff's recommendation and we are staying any action for 90 days, within which time the permit

has been issued and the work will be done. If there is an issue from our Department in issuing the permit, you can come back to us.

Attorney Gessner stated this is a final decision if you take this vote. You could ask for a hearing within 10 days.

President Lee asked let's ask the Department right now. Do they expect to have those done in 90 days?

Ed Sweeney, Deputy Director, stated this case is fairly pretentious between the neighbors. There could be more appeals and there will probably have to be some exploratory work done and 90 days would probably be very optimistic at this time.

Commissioner Murphy asked has it come out of Planning yet?

Deputy Director Sweeney stated I believe it went through DR.

Vice President Walker stated they went to DR and it is back to our Department, I think.

Commissioner Murphy asked should the continuance be more relevant?

Inspector Duffy stated it was approved by the Planning Department on the 25th of October.

Attorney Gessner stated once it is issued by the Department, it can be sent to the Board of Appeals, which then it does not get issued during the dependency of that appeal.

President Lee asked so why don't we do this. Why don't we continue it for 90 days? Would that be ok, let's continue it.

Vice President Walker stated why don't we continue it. I have to say that I probably will be voting to uphold this when it comes back but I am very uncertain about the timeframe and I do not want to box anybody in.

Commissioner Murphy stated yes, we do need an end to it and we have to be fair.

Vice President Walker made a motion seconded by Commissioner Murphy, to continue the case for 90 days.

President Lee stated to continue for 90 days.

Secretary Aherne asked so are we continuing it until February meeting?

Commissioner Hechanova said can we put in a condition of a monthly report because we need to find out if there is progress: I would like to keep a tighter reign on this.

Vice President Walker asked a written report?

Commissioner Hechanova stated a written report or any report.

The Appellant stated yes, I do not know how it benefits me. If Ms. Walker has indicated she is going to fine against me.

Vice President Walker stated it is not against you. It is a support of the Department's action against the violation. The violation occurred because of inappropriate work on the property so that is where this stems from not from the delay that we are acknowledging as the issue.

The Appellant stated the violation is really not for the permit.

Commissioner Hechanova stated the violation began when you did work that was not permitted.

The Appellant stated no, the violation stems from my failure or your claiming staff time to answer the NOV's. The attorney is shaking her head. It does not have anything to do with my work I did work without a violation and that would be fine with DBI. I do not want to argue but I will certainly do a 30-day report.

Vice President Walker stated I think we are not asking you to do it. The staff should update us as to what the status is.

President Lee stated the motion on the floor is to continue this item 90 days providing that the staff give us the 30 days report, 3 progress reports up to that day.

The Appellant stated can I report to?

President Lee stated you can send us your letters or whatever you like through the Commission Secretary.

Inspector Duffy stated the staff will give you that 30-day report.

The Board voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>

The motion carried unanimously.

F. UPDATE ON CASE NO. 6725 (Decided September 16, 2009):

2. CASE NO. 6725: 135 El Camino Del Mar

Owner of Record & Appellant: Yee Trust, c/o Walter M. & Ramona T. Yee,
P. O. Box 77503, San Francisco, CA 94107

Attorney for the Owner: Reuben & Junius, LLP, c/o Andrew Junius, One
Bush Street, Suite 600, San Francisco, CA 94104

At its September 16, 2009 hearing, the AAB upheld the Order of Abatement but stayed enforcement for 12 months from the issuance of the notice of decision. The Board has asked the Appellant to provide a status update.

Discussion item only.

Attorney Gessner stated this is three minutes to each side to provide an update on a discussion only item. President Lee stated ok, very well.

President Lee asked to hear from the Department first.

Inspector Patrick O’Riordan stated this is an update on case #6725 regarding 135 El Camino Del Mar. I have recently contacted the Planning Department who currently had the permit submittal documents regarding to comply with 3 notices of violations that were issued in 2008 and 2009.

Vice President Walker stated excuse me, do we have any paperwork on this?

Inspector O’Riordan stated yes, I have some paperwork on this.

Secretary Aherne stated no, nothing had been submitted.

Inspector O’Riordan stated I would like to read into the record a memorandum from the Planning Department, which I received yesterday, regarding the current status of the permit submittal documents.

The intent of this memorandum is to document the progress by the project sponsor to abate violations at the above-mentioned property. It is the opinion of the Planning Department that the sponsors worked diligently to get to the point they are today.

#1 plans are being updated to document the previously approved condition, the as-built condition and the proposed condition that would comply with the applicable Planning codes.

#2 The architect had submitted an acceptable design of the front portion of the building that the department can support.

#3 They have submitted a variance application to legalize the encroachments into the required rear yard and the request will be considered by the Zoning Administrator.

#4 All encroachments 30 inches above grade shall be documented as being adjusted to be fully contained on the subject property.

#5 Once a revision has been submitted, Section 311 notification will be processed.

That is the update from the Planning Department where it is at right now.

President Lee asked any questions from Commissioners?

Commissioner Hechanova asked what is the established bench line of 30 inches above grade?

Inspector O'Riordan stated Building Code does not require a building permit be issued for decks and patios that would be less than 30 inches above grade. Therefore we would consider such items such as patios less than 30 inches above grade to be a civil matter if they encroach upon a property line.

Commissioner Hechanova asked does building a deck above 30 inches or at 30 inches would require a railing?

Inspector O'Riordan stated some situation here has to do with a patio that is on grade so it is not 30 inches above grade so therefore it would not require a building permit.

Commissioner Hechanova stated but if they were to go ahead and put a deck that is at 30 inches it would not be enforceable.

Inspector O'Riordan stated well, if they put a deck in that were above 30 inches that would be required.

Commissioner Hechanova stated at 30 inches or anything like you say because I am just trying to make sure that we do not get back-ended into a non-compliance for example, railing requirement, for a deck.

Inspector O'Riordan stated I have visited the site and I believe that the one may be in question has to do with the brick patio that I have verified as actually on grade.

Commissioner Hechanova asked could it not be identified as just on grade?

Inspector O'Riordan stated if it is on grade therefore it would be less than 30 inches above grade. Therefore it would not be required a permit.

President Lee stated we heard this September 16, 2009. We stayed the Order of Abatement for 12 months so 12 months had passed. Does that mean the Order of Abatement had been recorded?

Deputy Director Sweeney stated that is my understanding, yes.

Commissioner Murphy stated we heard, before a year ago, about encroachment in a neighbor's property. Has that been dealt with or that is part of a new design?

Inspector O'Riordan stated that is currently documented and submitted documents. The submitted documents show the most recently approved condition. They show the as-built condition which some of it may be the illegal construction at the front, side and the rear. Thirdly, they show that the proposed condition that would be to legalize what they proposed to do to comply with the notice of violations that were issued.

Commissioner Murphy stated they have new set of plans showing everything that is on their property. What about the encroachment on the neighbor's property? Has that been dealt?

Inspector O'Riordan stated the Planning Department currently have a set of drawings that indicate moving the construction that cross the property line back onto the subject property.

Commissioner Hechanova stated if I recall, also at the time we executed a year ago, that there would have been quarterly reports and we just went into limbo for a long time until just now. Well, I will just wait until the Appellant comes up.

President Lee asked to hear from the Appellant. You have 3 minutes.

Andrew Junius, Attorney for the Owner, stated I am passing forward a pretty detailed letter with a number of exhibits that hopefully will answer a number of your questions that I will run through very quickly where we have been in the last year. We have been working very hard with the Planning Department to get this through the Department process to get the 311 notice out and eventually get to a building permit.

Exhibit A to the letter you just received is the letter/memorandum from the Planning Department that was just read into record by Mr. O'Riordan. That is acknowledging, I think, of a lot of work that has happened over the last year. I am going to run through really quickly where we have been.

Exhibit C shows about 2 ½ to 3 pages chronology of every step of the process we have been through in the last 12 months. Way back in February we got one of the detailed notices from the Planning Department outlining what their requirements are to move forward. We felt that at that time we needed a new architect so we hired Toby Morris so Toby Morris Architect did come on board and really helped us through the Planning Department. This is really a little more complex than your typical NOV's since it really is involving the redesign of the entire front of the building.

In June, we submitted our first plan set revision to Planning got comments back. In July, we submitted a second set got more comments back from Planning. In August, the architect posted a neighborhood meeting at their office to run through the plans and get comments from neighbors. In September, we submitted yet a third set of revisions to the Planning Department got more comments back.

As you were mentioning in the memorandum to the staff, we filed permit application on September 28th. Yet another meeting at Planning Department hosted this time by Jonas Ionin in late September with the neighbors. We noticed and held a pre-application meeting at the site with the neighbors yet again. On November 16th, we got the staff report from the staff.

We are making good progress and this is in the hands of the Planning Department and we are doing our best to move it forward. We do expect that the 311 notice finally should go out in the next week or so. There are still things left to do. That 311 notice triggered a 30-day appeal process. This is a contentious process after the meeting we have had with the neighbors we fully expect DR that DR will happen at the Planning Commission when the Commission calendar is available at this time I have been told were likely be set no sooner than February of next year if there is a discretionary review application.

After that as the Commission knows that we will get through the Commission, we will take the Commission's direction and we will have something we can build we hope and then we will go pull a permit and that permit can go appeal through the Board of Appeals. So there is still a way to go here and I think we have done some significant progress. I do want to thank Inspector O'Riordan and Jonas from Planning Department that they have been really excellent to work with.

Commissioner Murphy asked if the 311 notice is going out next week?

Attorney Junius stated very soon, hopefully next week or even this week

President Lee asked any public comment. You have 3 minutes

Mr. Simone stated I will try my best to explain to you what is going on here. First of all before I give a comment to Junius I am going to comment to the Department, Mr. Sweeney and Patrick O'Riordan. He knows not to ask twice but three or four times I sent a copy of the survey to them and they had a copy on file.

They ignored all my requests regarding encroachment and there are 4 encroachments on the property. The front of the building is more than 60 feet tall that is encroachment on the property. The railing on the side of the property, that needs to be removed, they are proposing to remove encroaching on the back of the houses to the property line, they ignored this patio, which is never discussed, that has to be resolved before they move on. They ignored all that and they know what needs to be done and 14 months passed by last year and nothing has been done.

According to information from your computer, they have a plan on hold since January 7th this year and nothing has been done. Then the Planning Department sent a notice of variance to submit some kind of plans, not through the Building Department and then back door they sent to the Planning and they are dealing with the Planning and themselves. Nobody knows what is going on.

I have to call Planning to get some information from them. So that is where we stand. They know very well encroachment needs to be resolved before we move further with this project. It

is nothing, nothing. Say oh yeah we are going to remove the encroachment from the house but it is 30 years before we will see that.

They have to do some kind of agreement to move forward because if we give another month, 6 month, 10 years whatever it is going to be the same story and it is going nowhere. He needs to get out of my property, he knows that. That is what it is all about. This is from the City system and not from my own mouth and I am not making up stories.

Last meeting on the premise, Mr. Sweeney stated clearly in front of you, that he is going to take investigation regarding Electrical and Plumbing and never has been done. Why? Also he supposed to get a report from the developer every 3 months and never has been done. I was here in front of you and I made a comment that to submit one last month. So it is just a bunch of lies, lies, lies and that is why it ended up with a side-keeping gate. Like I said again you get the same story. You have to do something about not giving them an extension or make an agreement they can move forward immediately.

Commissioner Murphy asked can I ask you a question? You have retained a surveyor? You have a surveyor? They have a surveyor? Mr. Simone stated that is correct. Yes, I do. Yes, it is a partial surveyor.

Commissioner Murphy asked have you ever gotten together and compare survey? Mr. Simone stated yes. They want a copy of my surveyor, yes. They know exactly what it is. There is no argument there but they are ignoring the issue and addressing the front addition, the side addition and the back addition. The rest of it came from nowhere and they know that. That is a simple issue here and they know it.

Commissioner Murphy asked you feel there is no communication there? Mr. Simone stated no communication.

Mrs. Simone stated last year your order of decision dated September 25th, you would allow Appellants additional time to resolve issues associated with property line dispute and City Planning Department but they have never tried to resolve the property line dispute with us and we would like to get them all resolved so that we can move forward and they can move forward.

I also would like to state that the front addition basically painted plywood and it has been like that for over two years and now it is deteriorating and it should be inspected for electrical or plumbing issues for the safety of the neighborhood and that is another area I think that should be investigated.

President Lee asked for other public comment.

Rodney Gravy, 145 El Camino Del Mar, stated the illegal additions here some have been here for over 10 years. The recent illegal additions at the front of the house which is supported by fraudulent plans started two and a half years ago. The first NOV was issued July 17, 2008. Your Order of Abatement was issued over 14 months ago. They have known about all this for a very

long time but just have not enough been done. We heard about the timeline of what has been done but it has not been done quickly.

There is a massive structure here on this property which is built into the required setbacks, over the property line in some cases. The structure is inappropriate and the structure is dangerous, as you just heard. There needs to be something done about this quickly.

The attempts to talk to the neighbors have really been an attempt to convince the neighbors what the plans are is what we should agree to. There has been no attempt to compromise. Any compromised suggestions mentioned by the neighbors have been fairly rejected and very contentious on their end in trying to get to something that the neighborhood is comfortable with.

As we heard from the Planning Department, there is a variance to continue to build into the open setback requirement. Something again that neighborhood does not want to see because of the open space. What I would like to ask, that the Board consider taking legal action to compel the property to put the house back into the historical approved plans.

I have a letter from one of the other neighbor who could not be here and I think it may have been sent to you ahead of time. If you do not have it, I have copies and if you like I could read it into the record.

Vice President Walker stated this is not an action item.

Secretary Aherne stated no, but I do believe you have a letter that I emailed to you and gave you from Robert Scavella.

President Lee asked if there are any other questions?

Mr. Gravy stated I actually have a question. Your order will stay for 12 months. It is now 14 months and there has not been quarterly updates, etc., and my question is what is the process from here?

President Lee stated that is what we are going to find out next. Any other public comments before we have discussion?

Vice President Walker stated I would like to know, from our position, I think that we asked for this to be issued if work is not done. From my understanding it has happened. Who do we ask? Mr. Sweeney, Deputy Director.

Deputy Director Sweeney stated currently, the matters before Planning, we have been waiting on Planning to issue a permit, deny a permit and give the property owner a chance to go to DR process and have all issues resolved either prior to the permit being issued or if they are not happy they can go before the Planning Commission and voice their displeasure and action.

Vice President Walker stated but our action? This action that we made a decision on that supposed to be? Mr. Sweeney stated it was recorded already.

President Lee stated I believe I asked if it has been recorded. I believe that it was.

Mr. Sweeney stated I believe I said it was.

President Lee stated that we can always ask the Abatement Appeals Board.

Vice President Walker stated it seems like the Planning Department has issued their order and it is back into our Department and are new permits are being reviewed? New applications for permits to?

Mr. Sweeney stated it is not out of Planning and it would not be out of Planning for awhile.

Vice President Walker stated so it is out of our jurisdiction at this point, until as such time it comes back into our Department, we do not have authority over it. So once it comes back in our Department, you are free to pursue the action of appealing the permit essentially and whatever you could do through the Planning Department.

President Lee asked does everybody understand that? If there is no other discussion, we will close this item.

Secretary Aherne stated Item G is public comment. This is general public comment. Seeing none. Item H for adjournment.

Vice President Walker made a motion, seconded by Commissioner Murphy, that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 10:49 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary